

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.109 of 1991
(Against the judgment of conviction dated
22.03.1991 and order of sentence dated
23.03.1991 passed by the learned 2nd Additional
Sessions Judge, Saran at Chapra in Sessions
Trial No.153/1987)

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1. Raja Singh, son of Janak Singh.
2. Binod Singh, son of Janak Singh
3. Janak Singh, son of Late Chhachall Singh
(All are resident of village- Banauta, P.S.- Parsa, District- Saran)

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 137 of 1991

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Birendra Singh, son of Laldeo Singh, resident of village- Banauta, P.S.- Parsa,
District- Saran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 171 of 1991

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1. Chandrika Singh, son of Ramsurat Singh.
2. Sipahi Singh, son of Ramsurat Singh
(All are residents of village- Banauta, P.S.- Parsa, District- Saran)

.... Appellant/s

Versus

.... Respondent/s

Appearance :

(In all the CR. APPEALS)

For the Appellant/s : Mr. Hirday Prasad Singh, Advocate

For the Respondent/s : Mr. Ajay Mishra, Addl. P.P.

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CORAM: HONOURABLE MR. JUSTICE SHYAM KISHORE SHARMA


and

HONOURABLE MR. JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT


(Per: HONOURABLE MR. JUSTICE SHYAM KISHORE SHARMA)

Date: 31-07-2013




Cr. Appeal (DB) No.109/1991 of Raja Singh, Binod Singh and Janak Singh, Cr. Appeal (DB) No.137/1991 of Birendra Singh and Cr. Appeal (DB) No.171/1991 of Chandrika Singh and Sipahi Singh have been taken up together as all the appeals have arisen out of one judgment of conviction dated 22.03.1991 and order of sentence dated 23.03.1991 passed by the learned 2nd Additional Sessions Judge, Saran at Chapra in Sessions Trial No.153/1987 holding the appellants guilty for the offence punishable under Sections 302/149 of the I.P.C. and they have been sentenced to undergo rigorous imprisonment for life. The appellants Chandrika Singh and Sipahi Singh have been further found guilty for the offence punishable under Section 302 of the I.P.C. and they have been sentenced to undergo rigorous imprisonment for life. The appellants Chandrika Singh, Janak Singh and Sipahi Singh have further been found guilty for the offence punishable under Sections 302/34 of the I.P.C. and they have been sentenced to undergo rigorous imprisonment for life. No separate sentence has been awarded to the appellants for the offence under Sections 147 and 148 of the I.P.C. The sentences were ordered to run concurrently.

2. The fardbeyan (Ext.2) with regard to occurrence was given on 18.02.1986 at 7.30 P.M. by the informant Deo Narayan Singh (P.W.7) at State Dispensary, Parsa narrating therein that Shri Bhagwan Singh (deceased) came to his house at preceding 4.00 P.M.




and told him that accused Chandrika Singh alongwith others was cutting sugarcane crops from the lands which Shri Bhagwan Singh has taken by way of exchange. The informant alongwith Shri Bhagwan Singh and Prabhu Nath Singh (P.W.3) went to the field at village Banawta Tole Bhathui and saw Chandrika Singh, Sipahi Singh, Janak Singh, Raja Singh, Binod Singh and Bijendra Singh cutting sugarcane. Shri Bhagwan Singh inquired as to why his sugarcane was being cut and he tried to intercept the tyre cart which was being used for carrying away the sugarcane on which Chandrika Singh told that the accused would not understand and ran to the sugarcane field and came with Bhala. Accused Sipahi Singh armed with Farsa, accused Janak Singh armed with Bhala, accused Raja Singh armed with Farsa and accused Binod Singh and Bijendra Singh armed with Lathi also came. Chandrika Singh after coming with Bhala struck it upon Sri Bhagwan Singh which caused injury upon his left side and Shri Bhagwan Singh fell down on account of assault by Bhala and thereafter Sipahi Singh assaulted upon the head of Sri Bhagwan Singh by Farsa and Janak Singh assaulted by Bhala on his left thigh. Shri Bhagwan Singh received injuries on account of assault. After assault, all the accused persons escaped. The villagers namely Parma Singh, Bijendra Singh and others came there. Sri Bhagwan Singh became unconscious and he was carried to Parsa State Dispensary for treatment where he was being treated. Sri Bhagwan



Singh was unconscious so fardbeyan of Deo Narayan Singh (P.W.7) was recorded. The fardbeyan (Ext.2) resulted into formal FIR bearing Parsa P.S. Case No.20/1986 under Sections 147, 148, 149, 324 & 307 of the I.P.C. and investigation commenced. In course of investigation, the injured died at Patna Medical College and Hospital and Section 302 of the I.P.C. was added. The injury report of Sri Bhagwan Singh (Ext.4) was obtained. The bloodstains were seized and seizure list (Exts. 3 and 6) were prepared. Inquest report (Ext.7) was also prepared. The statements of the witnesses were recorded. The place of occurrence was inspected. The case was found to be true, so charge-sheet was submitted. After completing all paraphernalia, the case was committed to the court of sessions where on appearance of all the accused, charge under Section 302/149 of the I.P.C. was explained to all the accused persons. Accused Chandrika Singh, Janak Singh and Sipahi Singh were further charged under Sections 302/34 of the I.P.C. Accused Chandrika Singh, Sipahi Singh also stood charged for the offence punishable under Section 302 of the I.P.C. Accused Chandrika Singh, Janak Singh, Sipahi Singh and Raja Singh further stood charged under Section 148 of the I.P.C. and accused Bijendra Singh and Binod Singh further stood charged under Section 147 of the I.P.C. They pleaded innocence, so the trial proceeded.

3. The defence of the appellants was of false implication.

Further defence was that not even one family member of Sri Bhagwan



Singh was examined. It has come in the evidence that Pirbahore police has recorded the fardbeyan at P.M.C.H but that was not brought on the record and it was a case in which adverse inference should have been taken against the prosecution and it should have been presumed that the prosecution with intention to save real culprit has implicated the accused and has suppressed the most important documents.

4. Before the trial court, the prosecution has examined P.W.1 Upendra Kumar, P.W.2 Rajesh Kumar, P.W.3 Prabhu Nath Singh, P.W.4 Parma Singh, P.W.5 Zahir Hasan, P.W.6 Mahima Pd. Singh, P.W.7 Dev Narayan Singh (informant), P.W.8 Amresh Pd. Sinha and P.W.9 Kaleshwar Paswan.

5. The defence has examined one formal witness Satya Narayan Sah.

6. P.W.1 is a formal witness, who has proved the writing of formal F.I.R (Ext.1), whereas, P.W.2 has proved the writing of P.W.9 Kaleshwar Paswan on fardbeyan (Ext.2). P.W.5 is another formal witness, who has proved the writing of seizure list (Ext.3). P.W.4 is FIR named witness, who has proved inter-se relationship of the parties.

7. The court of learned Sessions Judge considering the evidence and hearing the submissions of the parties and the learned counsel came to the opinion that the prosecution has succeeded in

proving the charge against the accused persons beyond shadow of all reasonable doubts, so the order of conviction was passed.

8. This Court is required to see as to whether the prosecution has succeeded in proving the charge beyond shadow of all reasonable doubts.

9. P.W.8 Dr. Amresh Pd. Sinha on 18.02.1986 while being posed as Medical Officer at Parsa State Dispensary had occasioned to examined the injured Shri Bhagwan Singh and found the following injuries :


(i) Penetrated wound 1" x ½"x deep to the lung in the left side anteriorly and 1" below the left clavicle.

(ii) Incised wound 1" x 1/6" x 1/6" on right parietal bone.

(iii) Incised wound ½" x 1/6" x ¼" on the upper part of thigh on left side anteriorly.


Injury No.1 was grievous, whereas, injury nos. 2 and 3 were simple. Injury No.1 was caused by sharp and pointed weapon may be Bhala and rest two were caused by sharp cutting weapon may be Farsa.

The doctor has opined that injury nos. 2 and 3 were superficial. The doctor has referred the patient for higher treatment at Patna Medical College and Hospital (hereinafter referred to as P.M.C.H).




10. The doctor's evidence is only to the extent that in the evening of 18.02.1986 Sri Bhagwan Singh (deceased) was brought to Parsa State Dispensary where he was medically examined and advised by the doctor. From the inquest report brought on the record, it appears that Sri Bhagwan Singh had died and the inquest report of the dead body was prepared. Though the post-mortem examination report has been attached, which has been marked as 'X' for identification but the doctor holding the post-mortem examination was not examined nor any report has come as to why the doctor holding the post-mortem examination was not examined.

11. P.W.7 Deo Narayan Singh (informant) has stated that on 18.02.1986 at 4.00 P.M. he was at his Dalan. Sri Bhagwan Das came there and informed that Chandrika Singh was cutting the sugarcane from the field of Bhagwan Singh. Upon this information, the informant alongwith Prabhu Nath Singh (P.W.3) and others inspected to the field and saw all the accused persons/appellants carrying away cut cane and loading on tyre-cart, which was protested by the deceased and the informant and this led to an altercation and accused Chandrika Singh ran to the sugarcane field and brought a Bhala from there and accused Sipahi Singh with Farsa, Janak Singh with Bhala, Raja Singh with Farsa and two other accused with Lathi came from the sugarcane field and accused Chandrika Singh gave a Bhala blow on the chest of Shri Bhagwan Singh and Shri Bhagwan




Singh fell down and thereafter, accused Sipahi Singh gave a Farsa blow on his head and accused Janak Singh assaulted him with Bhala causing injury on his left thigh. Binod Singh assaulted him with Lathi and accused Bijendra Singh was standing there with a Lathi. The neighbours came but the accused persons fled away. The injured was taken to the Parsa State Dispensary where fardbeyan of informant was given. Shri Bhagwan Singh was unconscious and on advice of doctor, he was taken to the P.M.C.H. where he succumbed to injury on 19.02.1986. It has been explained that witness Bijendra Singh could not take the witness box as he was engaged in his service. He has been thoroughly cross-examined in all aspects. In his cross-examination, he has stated that the plot of dispute was Plot No.1017 of Khata No.196 that was taken by Sri Bhagwan Singh through a deed of exchange, which was not liked by the accused persons.

12. The informant has been supported by other witnesses namely P.Ws. 3, 4 and 6 but P.W.3 has stated in para 22 of evidence that his statement was not recorded by police. From evidence of P.W.3 para 22, it appears that he has deposed for the first time in the court and such deposition cannot be accepted. It has come in evidence that the parties are close relatives and they come from the same family. Purb Bijai Singh and Bal Govind Singh were full brothers. Purb Bijai Singh was father of three sons namely, Raini Singh, Ram Jitan Singh and Mahanth Singh. Surat Singh was son of Raini Singh.




Chandrika Singh and Sipahi Singh are sons of Surat Singh. Jirmajiya is the wife of Surat Singh. Ram Jatan Singh had two sons namely Sagar Singh and Moti Chand Singh and a daughter Deoraniya. Deoyano is the wife of Sagar Singh and Sudamiya Devi is the daughter of Sagar Singh. Moti Chand Singh had four sons, namely, Mukhtar Singh, Shri Bhagwan Singh, Chandrama Singh and Raj Kumar Singh. Phuljhari is the wife of Motichand. Deoraniya was married to Harihar Singh of village-Kohra Mathiya and Deo Narayan Singh (informant) is the son of Harihar Singh. Mahanth Singh died issueless leaving behind his widow Ram Jhariya. Bal Govind Singh had two sons namely Nabab Singh and Sahdeo Singh and Sahodara Kuar is the wife of Sahdeo Singh. Nabab Singh had a son namely Nand Lal Singh and Prabhu Nath Singh (P.W.3) is the son of Nand Lal Singh. This analysis indicates that parties belong to same genealogical table. It has come in the evidence that Sudamiya Devi was murdered and Exhibit B is the charge-sheet of that murder case, which has been brought on the record. In that case of murder, Moti Chand Singh, his wife Phuljhariya and Nand Lal Singh, father of P.W.3 Prabhunath Singh have figured as accused. In that case, deposition of Jirmaniya, wife of Surat Singh and mother of accused Chandrika Singh and Sipahi Singh (Ext. A/2) had been brought on the record. It goes to show that Chandrika Singh and Sipahi Singh had deposed in the murder case against the accused persons. From the



evidence of P.W.3 read with evidence of P.W.7, it has come that Deoyani, wife of Sagar Singh had executed a deed in respect of property in favour of P.W.7 (informant). The comprehensive discussion and perusal of the evidence show the background which led to the present occurrence. The plot, in question, has been in possession of the deceased and that was captured. The motive was there and the motive has been proved by the prosecution.

13. So far manner of occurrence is concerned, it has come in the evidence that assault on vital parts was given by Sipahi Singh and Chandrika Singh and later on was given upon thigh by Janak Singh also. The other three accused persons were present but the evidence with regard to participation of Raja Singh, Binod Singh and Bijendra Singh are totally lacking. They may be present at the place of occurrence, even according to the prosecution the whole evidence is accepted to be true, they are residents of the same place and same village. Therefore, it cannot be said that they had common intention with the accused persons, no overt act has been attributed to any of them by any of the witnesses, therefore, cases of three appellants namely Raja Singh, Binod Singh and Bijendra Singh are completely on different footing as no person has alleged anything against them. There is no evidence to show that they have even touched the injured or they have done anything which could be comprehended to be the evidence to cause any harm to the deceased.



14. From the records, it appears that the post-mortem upon the dead body was held, that has been formally brought on the record, which has been marked as 'X' for identification. It has not been accepted under the provisions of Evidence Act. There is no explanation as to why the doctor, who has held the autopsy upon the dead body, was not put to witness box. In absence of non-examination of the doctor, adverse inference has to be taken against the prosecution. Due to non-examination of the doctor, this Court cannot analyze the situation which could have led to death of the deceased.

15. There is no evidence on the record to the extent that due to assault by Chandrika Singh and Sipahi Singh on vital parts of the deceased, he was taken to the hospital and the attack was upon vital part of the dead body which could lead to death. So far as Janak Singh is concerned, it has been brought on the record that he has attacked upon the thigh of the deceased and the injury which has been attributed against Janak Singh on non-vital part is simple. It cannot be said that he has no intention to commit such act, which has ultimately caused harm to the deceased; therefore, the case of Janak Singh is completely on different footing from the cases of others.

16. Learned counsel for the appellants has submitted that case of the accused is of acquittal as the doctor has been withheld without any explanation. It has also been submitted that it has come in the evidence that fardbeyan was recorded at P.M.C.H. by Pirbahore

police but that was not brought on the record. On this score also, it has been submitted that the prosecution has withheld the main document which could have tilted result. On this basis, it has been strongly argued that the accused persons may be treated to be innocence and the prosecution case is fit to be doubted.

17. On the other hand, learned counsel for the State has submitted that the post-mortem examination report has been brought on the record and the death has been proved.

18. After analyzing the entire circumstances and evidence on the record, it can be said that the prosecution has been able to prove that Chandrika Singh and Sipahi Singh have attacked Shri Bhagwan Singh (deceased) while injury attributed upon chest by Chandrika Singh through his Bhala has been found by the doctor at Parsa State Dispensary. Similarly injury attributed to Bhagwan Singh (deceased) by Sipahi Singh by Farsa on his head has also been found by the doctor, but no intervening circumstances have been brought on the record. The act was neither intended nor the accused was in knowledge that such an act ultimately would prove fatal, therefore, it cannot be safely said that the accused was intending to cause death or was having knowledge that if such act could cause death. It can be said that the offence committed was culpable homicide not amounting to murder.

19. Section 304 of the Indian Penal Code does not create

any separate offence but provides different mode of punishment for culpable homicide not amounting to murder.

20. From the narration of evidence on the record, it is apparent that case on the other hand is covered under the provisions of Section 304 (ii) of the I.P.C. so far it relates to Chandrika Singh and Sipahi Singh as the injury attributed to Janak Singh was found on non-vital part of the deceased that was simple, so his case cannot be included with the case of others.

21. The circumstances on the record make out three categories of offenders. In the first category, Chandrika Singh and Sipahi Singh come. The offence against them is that though they were responsible for causing death but for that they have been punished under Section 304 (ii) of the I.P.C. In the second category, Janak Singh comes. The injury caused by him was found on the thigh and was simple and he has been punished under Section 324 of the I.P.C. In the third category, Raja Singh, Binod Singh and Bijendra Singh have come, they had not participated for committing any overt act.

22. In the result, appellants Raja Singh, Binod Singh and Bijendra Singh deserve to be acquitted. So far appellant Janak Singh is concerned; his conviction is altered to Section 324 of the I.P.C. So far as appellants Chandrika Singh and Sipahi Singh, their conviction is being altered to Section 304 (ii) of the I.P.C.

23. From the evidence, it has come that appellants

Chandrika Singh and Sipahi Singh have remained in jail custody for five and half years. So, it is held that the period already undergone in custody by them is sufficient to meet the ends of justice.

24. Similarly, for the offence under Section 324 of the I.P.C., the period already undergone by appellant Janak Singh is found to be adequate.

25. With the aforesaid modification in the sentence, conviction of appellants Janak Singh, Chandrika Singh and Sipahi Singh is upheld.

26. In the result, these appeals are partly allowed.

(Shyam Kishore Sharma, J)

N.A.F.R/V.K. Pandey,

(Amaresh Kumar Lal, J)